IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.281 OF 2006

Ananda Gangaram Jagtap ...Appellant

vs.

Ramgonda Balgonda Patil ...Respondent

Mr.N.V.Bandiwadekar for the Appellant
Ms Prabha Badadare i/b Mr.P.R.Arjunwadkar for the Respondent

CORAM: A.S.OKA,J.
DATE : JULY 11, 2007.

P.C.:

1. Heard Shri Bandiwadekar for the Appellant. The Appellant is the original Defendant in a suit for specific performance filed by the Respondent. The Trial court decreed the suit and the Appellate Court has dismissed the Appeal filed by the Appellant.

2. Shri Bandiwadekar for the Appellant submitted that the Respondent-Plaintiff did not step into the witness box and the evidence was adduced by his constituted attorney. He submitted that in a suit for specific performance where the burden is on the original Plaintiff to prove the readiness and willingness to perform his part of the agreement, the trial court ought to have dismissed the suit on account of failure of the Respondent to enter the witness box. He invited my attention to the finding recorded by the Appellate Court in paragraph 24 of the Judgment and submitted that the exercise of discretion under section 20 of Specific Relief Act,1963 is

perverse.

3. I have considered the submissions. The courts below after considering the documentary evidence on record have accepted the case made out by the Respondent-Plaintiff that from the date of execution of the agreement till 29th April 1999, the Appellant received a total amount of Rs.1,05,000/- out of total agreed consideration of Rs.1,45,000/-. The courts below have accepted the case made out by the Respondent that substantial part of the consideration has already been received by the Appellant. A finding of fact is also recorded on the basis of the conduct of the Appellant of accepting various amounts that the time was not essence of the contract. The findings which are recorded by the trial court on the issue of readiness and willingness and the payment of part consideration are based on the documentary evidence on record. If on the basis of the documentary evidence on record the Respondent-Plaintiff has established his readiness and willingness to comply with his part of the agreement, the suit could not have been dismissed only on the ground that the Respondent has not stepped into witness box.

4. While considering the question whether the decree for specific performance should be passed, the Appellate Court has considered the fact that except the suit land, the appellant is not in possession of any other agricultural land. However,

the Appellate court found that the Appellant is holding a house property at Ichalkaranji having a substantial value. The Appellate Court has also referred to the fact that though the Appellant is working on powerloom, his sons are also in the employment. Considering these factors, a finding of fact has been recorded that even if the decree for specific performance is passed, the Appellant will not suffer any hardship. The findings recorded by the courts below are based on appreciation of oral and documentary evidence on record. There is no perversity in the said findings. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE